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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,678	04/10/2001	Tadayuki Suzuki	0425-0821P	3254

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 10/08/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/744,678

Applicant(s)
Suzuki et al

Examiner
Alton Pryor

Art Unit
1616



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 28, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 13-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16, and 21-26 is/are rejected.
- 7) ☒ Claim(s) 13-15 and 17-20 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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Claim Rejection under 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9,16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Minoru et al (JP 06336401; 12/6/94) on record and Masahiko et al (JP 06227904; 8/16/94) or Carstairs et al (WO 9424857; 11/10/94) on record in combination. New claims 21-26 are added to this rejection.

Minoru teaches a method of applying to a plant a plant freshness composition comprising an alkyl glycoside. Minoru does not teach the method/composition comprising a polysaccharide and /or gibberellin. However, Masahiko teaches a composition/method for maintaining the freshness of plants comprising trehalose (disaccharide) for maintaining the freshness of plants. Carstairs teaches a composition/method comprising gibberellin for maintaining or enhancing the freshness of plants. It would have been obvious to one having ordinary skill in the art to combine the composition/method of Minoru with the composition/method of Masahiko or Carstairs. One would have been motivated to do this in order to develop a composition/method that would have been more effective for keeping the freshness of plants.

Applicant argues there exist no motivation to combine the cited prior art references.

Applicant argues unexpected data overcomes the prior art rejection of record.

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Examiner argues there exist ample motivation for combining references since each prior art reference cited has the same utility, i.e., each reference teaches compositions for enhancing plant freshness. In the absences of unexpected data: "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069m 1072. Examiner agrees that unexpected data for a composition comprising decyl polyglycoside plus tetrehalose and/or gibberellin are presented by the applicant. However, examiner argues that Minoru discloses alkyl glycoside which would include decyl glycoside plus all other alkyl glycosides. A mere showing of unexpected results for a single alkyl glycoside such as decyl glycoside is not ample support for allowing all alkyl glycosides. It is also important to note that Minora teaches that other classes of glycosides such as aromatic alcohol and allicylic alcohol glycosides are effective in enhancing the freshness of plants.

II. Claim Objection

Claims 13-15,17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not suggest the instant composition comprising the limitations of these claims.

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Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Primary Examiner, AU 1616

10/3/02